

Amend Section 49-005 to read:

49-005 SPECIAL DEFINITIONS

49-005

- (a) (1) “Affidavit (New version)” or “New Affidavit of Support” refers to INS Form I-864, Affidavit of Support under Section 213A of the Immigration and Nationality Act (INA), which is completed and signed by the sponsor. Certain immigrants are inadmissible to the United States as an alien likely to become a public charge, unless a sponsor has executed a Form I-864. An affidavit of support is executed when a sponsor signs a Form I-864 before a notary public or an Immigration or Consular Officer and that Form I-864 is submitted to an Immigration or Consular officer. Under Section 213A of the INA, the new Affidavit is a legally enforceable contract between the sponsor and the Federal Government, for the benefit of the sponsored immigrant and of any Federal, State, or local government agency or entity that provides the sponsored immigrant with any means-tested public benefit. The new Affidavit is required for all applications for immigrant visas or for adjustment of status filed on or after December 19, 1997.
- (2) “Affidavit (Old version)” or “Old Affidavit of Support” refers to INS Form I-134 that was signed prior to the formulation and implementation of the new version of the Affidavit (see (1) above).
- (b) (1) ~~Reserved~~ “Basic CAPI” refers to the original eligibility component of CAPI, as set forth in Welfare and Institutions Code Sections 18938(a)(1) and (2), for which the earliest possible payment date was December 1, 1998. A non-citizen is potentially eligible for basic CAPI if he or she:
- (A) Entered the United States prior to August 22, 1996 or
- (B) Entered the United States on or after August 22, 1996 and
1. Has a sponsor who is deceased or disabled (as defined in MPP Section 49-020.312) or
 2. Is a victim of abuse by the sponsor or the sponsor’s spouse.
- (c) (Continued)
- (d) ~~(Reserved)~~
- (1) “Department” means the California Department of Social Services.
- (e) (4) “Extended CAPI,” refers to the more recent eligibility component of CAPI, as set forth in Welfare and Institutions Code Section 18938(a)(3) for which the earliest possible payment date was October 1, 1999. A non-citizen is potentially eligible for

extended CAPI if he or she entered the United States on or after August 22, 1996 and also meets one of the following criteria:

- (A) Does not have a sponsor.
- (B) Has a sponsor who is NOT deceased or disabled.
- (C) Has a sponsor and is NOT a victim of abuse by the sponsor or the sponsor's spouse. (Continued)

Authority Cited: Sections 10553, 10554, and 18943, Welfare and Institutions Code.

Reference: 8 CFR, Part 213a; 20 CFR 416.105 through 416.110; 20 CFR 416.120; 20 CFR 416.972; 20 CFR 416.974; 20 CFR 416.1133; 20 CFR 416.1140; 20 CFR 416.1160; 20 CFR 416.1321; 20 CFR 416.1618; 20 CFR 416.1806; 20 CFR 416.2001; Social Security Administration's Program Operations Manual System, SI 02301.201; Section 213a of the Immigration and Nationality Act, and Sections 18937, ~~and 18938~~, 18940, and 18944, Welfare and Institutions Code.

Amend Section 49-020 to read:

49-020 IMMIGRATION STATUS (Continued)

49-020

- .2 Specific eligibility requirements for individuals whose date of entry into the United States was prior to August 22, 1996. Non-citizens in this category (who meet all other requirements) are eligible for basic CAPI, but not extended CAPI. (Continued)
- .3 Two different sets of §specific eligibility requirements exist for individuals who legally entered the United States on or after August 22, 1996. One set exists for basic CAPI, and another set for extended CAPI (as defined in MPP Sections 49-005(b) and (e), respectively). Refer to MPP Section 49-037 for the different deeming periods for each component.
 - .31 To be eligible for basic CAPI, an immigrant who legally entered the United States on or after August 22, 1996 must be sponsored and one of the following must apply: (Continued)
 - .32 To be eligible for extended CAPI, a non-citizen who meets the definition of Qualified Alien or Permanently Residing in the United States Under Color of Law (as defined in MPP Sections 49-005(q) and (p), respectively) must have entered the United States on or after August 22, 1996 and be ineligible for basic CAPI under any of the conditions described in MPP Sections 49-020.311 through .313.

Authority Cited: Sections 10553, 10554, and 18943, Welfare and Institutions Code.

Reference: 20 CFR 416.1600; P.L. 104-193 (Personal Responsibility and Work Opportunity Reconciliation Act of 1996) as amended, Sections 401 and 402 (~~Personal Responsibility and Work Opportunity Reconciliation Act of 1996~~) and Sections 18938, ~~and~~ 18940, and 18944, Welfare and Institutions Code.

Amend Section 49-035 to read:

49-035 INCOME (Continued)

49-035

.7 Deemed income is the amount of another person's income that is considered to belong to the applicant or recipient regardless of whether the other person actually makes the money available to the applicant or recipient. (Continued)

.72 There are three categories of individuals whose income may be deemed to an applicant or recipient. (Continued)

.723 Sponsor of a non-citizen, regardless of where the sponsor is living. (Continued)

(b) The length of the deeming period depends on:

(1) ~~Which~~ Which version of Affidavit of Support [as defined in MPP Section 49-005(a)] the sponsor signed, and

(2) For a non-citizen who entered the United States on or after August 22, 1996, whether he or she is eligible for basic CAPI or extended CAPI (see MPP Sections 49-020.2 through .32).

(c) ~~Deeming from a sponsor who signed a new Affidavit of Support applies unless or until one of the following occurs: Refer to Section 49-037 for detailed instructions on when sponsor deeming applies, length of sponsor deeming periods, and exceptions to sponsor deeming.~~

(1) ~~The sponsor dies.~~

(2) ~~The non-citizen becomes a naturalized citizen.~~

(3) ~~The non-citizen is credited with 40 quarters of coverage as defined under Title II of the Social Security Act.~~

(4) ~~The non-citizen, the non-citizen's minor child, or the non-citizen's parent if the non-citizen is a minor child is a victim of abuse as defined in MPP Section 49-020.313, and the victim is living in a different household than the abuser.~~

(d) ~~Deeming from a sponsor who signed an old Affidavit of Support applies unless or until one of the following occurs:~~

(1) ~~The sponsor dies.~~

- (2) ~~The non-citizen has resided in the United States for 3 years since the date of admission for permanent residence as established by the Immigration and Naturalization Service.~~
- (3) ~~The non-citizen becomes blind or disabled (as defined for SSI/SSP purposes) after admission to the United States.~~

.73 (Continued)

Authority Cited: Sections 10553, 10554, and 18943, Welfare and Institutions Code.

Reference: 8 CFR 213a.2(e); 20 CFR 416.202; 20 CFR 416.1103; 20 CFR 416.1104; 20 CFR 416.1110 through .1112; 20 CFR 416.1120; 20 CFR 416.1124; 20 CFR 416.1130; 20 CFR 416.1131; 20 CFR 416.1132; 20 CFR 416.1140; 20 CFR 416.1157; 20 CFR 416.1160; 20 CFR 416.1161; 20 CFR 416.1165, 20 CFR 416.1166a(c) and (d)(3); P.L. 104-193, Section 421(b) and (f), (Personal Responsibility and Work Opportunity Reconciliation Act of 1996); Section 1621 of the Social Security Act; 8 US Code Section 1631; Social Security Administration's Program Operations Manual System, Sections SI 00502.240, SI 00502.280, SI 01320.910, SI 01320.915, and SI 01320.920; and Sections 18940 and 18941, Welfare and Institutions Code.

Adopt Section 49-037 to read:

49-037 SPONSOR DEEMING

49-037

- .1 Sponsor-deeming rules apply regardless of whether or not the sponsor actually provides the non-citizen with any support. Sponsor-deeming rules include counting the income and resources of the sponsor as belonging to the non-citizen, verifying the sponsor's information, establishing the correct deeming period, interaction with other deeming rules, and applying appropriate exceptions and income or resource exclusions in determining the amount of income and resources to be deemed to the non-citizen.
- .2 Sponsor deeming for non-citizens whose sponsor signed the New Affidavit of Support

 - .21 Deeming from a sponsor who signed a New Affidavit of Support applies to a non-citizen who is eligible for basic CAPI unless or until one of the following occurs:

 - .211 The sponsor dies.
 - .212 The non-citizen becomes a naturalized citizen.
 - .213 The non-citizen is credited with 40 quarters of coverage as defined under Title II of the Social Security Act.
 - .22 For a non-citizen who is ineligible for basic CAPI, deeming from a sponsor who signed a New Affidavit of Support applies for 10 years from the date of the sponsor's execution of the Affidavit or the date of the non-citizen's arrival in the United States, whichever is later.
 - .23 Sponsor deeming does NOT apply under either basic CAPI or extended CAPI if a sponsor has signed a New Affidavit of Support and any of the following is true:

 - .231 The non-citizen, the non-citizen's minor child, or the non-citizen's parent if the non-citizen is a minor child, is a victim of abuse as defined in MPP Section 49-020.313, and the victim is living in a different household than the abuser.
 - .232 The county determines that the non-citizen is a victim of abuse by his or her sponsor or the sponsor's spouse.
 - .233 The county determines that the non-citizen meets the criteria for the indigence exception as described in MPP Section 49-037.4.
 - .24 For both basic CAPI and extended CAPI, when the sponsor has signed the New Affidavit of Support and the sponsor is the non-citizen's ineligible spouse or parent, sponsor deeming applies instead of deeming from an ineligible spouse or parent.
- .3 Sponsor deeming for non-citizens whose sponsor signed the Old Affidavit of Support

- .31 Deeming from a sponsor who signed an Old Affidavit of Support applies to non-citizens who are eligible for basic CAPI unless or until one of the following occurs:
 - .311 The sponsor dies.
 - .312 The non-citizen has resided in the United States for three years since the date of admission for permanent residence as established by the Immigration and Naturalization Service.
- .32 For a non-citizen who is ineligible for basic CAPI, deeming from a sponsor who signed an Old Affidavit of Support applies for 10 years from the date of the sponsor's execution of the Affidavit or the date of the non-citizen's arrival in the United States, whichever is later.
- .33 Sponsor deeming does not apply under either basic CAPI or extended CAPI if a sponsor has signed an Old Affidavit of Support and any of the following is true:
 - .331 The non-citizen becomes blind or disabled as defined for SSI/SSP purposes after admission to the United States.
 - .332 The non-citizen is not Lawfully Admitted for Permanent Residence (LAPR) to the United States as determined by the Immigration and Naturalization Service.
 - .333 The county determines that the non-citizen is a victim of abuse by his or her sponsor or the sponsor's spouse.
- .34 For both basic CAPI and extended CAPI, when the sponsor has signed the Old Affidavit of Support and the sponsor is the non-citizen's ineligible spouse or parent, deeming from an ineligible spouse or parent applies instead of deeming from a sponsor.
- .4 The indigence exception for non-citizens whose sponsor signed the New Affidavit of Support
 - .41 The indigence exception applies when all of the following are met:
 - .411 Sponsor-deeming results in denial, suspension, or reduction of CAPI benefits;
 - .412 The non-citizen is unable to obtain both food and shelter;
 - .413 The non-citizen completes and signs the CAPI Indigence Exception Statement (SOC 809) and
 - .414 The county determines that the indigence exception applies.
 - .42 The indigence exception does NOT apply when:

- .421 The non-citizen lives with his or her sponsor, or
- .422 The non-citizen lives with someone other than the sponsor and receives free room and board.
- .43 If the non-citizen is living apart from his or her sponsor and not receiving free food and shelter in another person's household, the non-citizen shall be considered unable to obtain food and shelter if:
- .431 The total gross income that the non-citizen receives from all sources is less than the federal SSI Individual rate if the non-citizen is not living with his or her spouse, or the federal SSI Couple rate if the non-citizen is living with his or her spouse, and
- .432 The resources available to the non-citizen are less than the applicable CAPI resource limit.
- .44 The total gross income and available resources counted for the purpose of determining whether the non-citizen is unable to obtain food and shelter consist of:
- .441 All of the non-citizen's own income (including income normally excluded such as General Assistance and Food Stamps) and resources (including liquid resources normally excluded such as burial funds).
- .442 The income and resources of the non-citizen's spouse (if living together) or parent(s) (if living with the minor non-citizen), and
- .443 Any cash, food, housing, or other assistance provided by other individuals or agencies (including the sponsor).
- .45 The indigence exception applies for a 12-month period.
- .451 The period begins whenever all of the conditions are met and runs for 12 consecutive months (including nonpayment months).
- .452 Sponsor-deeming does not apply during the 12-month period.
- .453 The exception period ends with the last day of the 12th month unless or until a new indigence determination is made.
- .46 The county must do all of the following whenever the non-citizen has requested the indigence exception:
- .461 Obtain a completed form signed by the non-citizen specifically applying for the exception that provides information regarding his or her living arrangements and income.

.462 Contact the sponsor to confirm the non-citizen's allegations regarding the amount of income and resources that the sponsor provides or makes available to the non-citizen.

(a) Contact INS for the sponsor's address if the sponsor's whereabouts are unknown.

(b) If the sponsor cannot be located, accept the non-citizen's allegation if it is credible and does not conflict with other information in the file.

.463 Based on all available evidence, prepare a written determination as to whether the indigence exception applies or not. If the exception does apply:

(a) Determine the amount of income the non-citizen receives and the resources available to the non-citizen. Determine CAPI eligibility and payment amount based on these figures.

(b) Notify the Immigration and Naturalization Service and the Department of the determination.

.5 Verification of Sponsor Information

.51 The non-citizen is responsible for obtaining the sponsor's cooperation in developing and documenting the information needed to determine the sponsor's income and resources, the information needed to make an indigence exception determination, or any other information from the sponsor needed to apply the deeming rules described in this sub-chapter.

.511 If a sponsor cannot be located or leaves the United States, it is the non-citizen's responsibility to obtain evidence of the sponsor's income and resources.

.512 If the non-citizen does not provide requested verification of the sponsor's income and resources including a signed statement from the sponsor regarding his or her income and resources, the county must deny the application or suspend eligibility and payment in accordance with MPP Sections 49-015.13 or 49-060.1(d).

.52 The county must verify alleged lack of sponsorship with the Immigration and Naturalization Service whenever a non-citizen who is lawfully admitted for permanent residence (as determined by the Immigration and Naturalization Service) alleges not having a sponsor.

.53 The county must request a signed statement from the sponsor(s) regarding the income and resources of the sponsor(s), unless the statement of the non-citizen regarding the sponsor(s)' income and resources would preclude CAPI eligibility.

- .54 The county must ensure that a copy of the Affidavit is in the file and must compare it with the sponsor's allegations if the allegations appear to allow eligibility for the non-citizen.
- .541 The non-citizen is ultimately responsible for obtaining a copy of the Affidavit. (A non-citizen can request a copy of the Affidavit from the Immigration and Naturalization Service under the Freedom of Information Act, if necessary.)
- .542 The sponsor must explain and provide evidence for any material discrepancy between his or her current allegations and what was recorded in the Affidavit.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 10553, 10554, 18938(a)(1) and (2), 18940, and 18940(b), Welfare and Institutions Code; 20 CFR 416.1160, 416.1166a, and 416.1204; Social Security Administration's Program Operations Manual System (POMS) SI 00502.240, SI 00502.280, SI 01320.910, SI 01320.915, and SI 01320.920; and 8 USC 1631.

Amend Section 49-040 to read:

49-040 RESOURCES (Continued)

49-040

.7 The resources of any non-citizen are deemed to include the resources of the non-citizen's sponsor(s) regardless of whether they live in the same household and regardless of whether the sponsor(s) actually make the resources available to the applicant or recipient.
(Continued)

.74 Refer to Section 49-037 for detailed instructions on when sponsor deeming applies, length of sponsor deeming periods, and exceptions to sponsor deeming.

Authority Cited: Sections 10553, 10554, and 18943, Welfare and Institutions Code.

Reference: 20 CFR 416.1201; 20 CFR 416.1202; 20 CFR 416.1204; 20 CFR 416.1205; 20 CFR 416.1207; 20 CFR 416.1210 through 416.1239; Section 1631(a)(3) of the Social Security Act, and Section 18940, Welfare and Institutions Code.

Amend Section 80-310 to read:

80-310 DEFINITIONS - FORMS

80-310

The following forms apply to the regulations in Divisions 40 through 50 and 80 through 89

s. (Continued)

(6) SOC 809

The "Cash Assistance Program for Immigrants (CAPI) Indigence Exception Statement" (Rev. 6/02) is a form to be completed by CAPI applicants or recipients who are claiming that they meet the indigence exception to sponsor-deeming.

t. (Continued)

Authority Cited: Sections 10553, 10554, and 10604, Welfare and Institutions Code.

Reference: 45 CFR 206.10(a)(8); Sections 10553, 10554, 11450(b), 12300, 12300.2, 12304, 12304.5, and 14132.95, Welfare and Institutions Code, and Judgment Re: Tyler v. Anderson, Sacramento Superior Court Case No. 376230, dated January 22, 1999.